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7 ST. PAUL FIRE AND MARINE INSURANCE COMPANY

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

11
12 E.PIPHANY, INC., a California
corporation,

13 Plaintiff,

14 v.

15 ST. PAUL FIRE & MARINE
16 INSURANCE COMPANY, a Minnesota
corporation,

17 Defendant.
18

CASE NO. C08 02621 JW

**DEFENDANT ST. PAUL FIRE AND
MARINE INSURANCE COMPANY'S
ANSWER TO COMPLAINT**

JURY TRIAL DEMANDED

19
20 Defendant St. Paul Fire and Marine Insurance Company (“St. Paul”), in answer to the
21 complaint filed by plaintiff E.piphany, Inc., hereby states as follows:

22 1. In response to paragraph 1 of the complaint, St. Paul is without knowledge or
23 information sufficient to form a belief as to the truth of the averment that plaintiff was at all
24 relevant times a California corporation. St. Paul admits the averment that it is a Minnesota
25 corporation with its principal place of business in Minnesota, and admits that this court has
26 jurisdiction over the action.

27 2. St. Paul is without knowledge or information sufficient to form a belief as to the
28 truth of the averments contained in paragraph 2 of the complaint.

1 3. St. Paul is without knowledge or information sufficient to form a belief as to the
2 truth of the averments contained in paragraph 3 of the complaint.

3 4. St. Paul admits the averments contained in paragraph 4 of the complaint.

4 5. St. Paul is without knowledge or information sufficient to form a belief as to the
5 truth of the averments contained in paragraph 5 of the complaint, but admits that venue is proper
6 in the Northern District of California.

7 6. In response to paragraph 6 of the complaint, St. Paul admits that it is licensed to
8 transact insurance in the State of California and in fact did so. St. Paul is without knowledge or
9 information sufficient to form a belief as to the truth of the remaining averments contained in
10 paragraph 6 of the complaint.

11 7. St. Paul admits that the complaint concerns a contract of insurance issued by St.
12 Paul to E.piphany, Inc., and that venue is proper in the Northern District of California. St. Paul is
13 without knowledge or information sufficient to form a belief as to the truth of the remaining
14 averments contained in paragraph 7 of the complaint.

15 8. St. Paul is without knowledge or information sufficient to form a belief as to the
16 truth of the averments contained in paragraph 8 of the complaint.

17 9. St. Paul is without knowledge or information sufficient to form a belief as to the
18 truth of the averments contained in paragraph 9 of the complaint.

19 10. In response to paragraph 10 of the complaint, St. Paul admits that it issued Policy
20 No. TE09405602 to E.piphany, Inc., and that said policy provided insurance pursuant to all of the
21 terms, conditions, limitations, exclusions, and endorsements contained therein. To the extent
22 that any of the averments contained in paragraph 10 of the complaint are to the contrary, St. Paul
23 denies each and every such averment.

24 11. In response to paragraph 11 of the complaint, St. Paul admits that it issued Policy
25 No. TE09405602 to E.piphany, Inc., and that said policy provided insurance pursuant to all of the
26 terms, conditions, limitations, exclusions, and endorsements contained therein. To the extent
27 that any of the averments contained in paragraph 11 of the complaint are to the contrary, St. Paul
28 denies each and every such averment.

1 12. In response to paragraph 12 of the complaint, St. Paul admits that it issued Policy
2 No. TE09405602 to E.piphany, Inc., and that said policy provided insurance pursuant to all of the
3 terms, conditions, limitations, exclusions, and endorsements contained therein. To the extent
4 that any of the averments contained in paragraph 12 of the complaint are to the contrary, St. Paul
5 denies each and every such averment.

6 13. In response to paragraph 13 of the complaint, St. Paul admits that it issued Policy
7 No. TE09405602 to E.piphany, Inc., and that said policy provided insurance pursuant to all of the
8 terms, conditions, limitations, exclusions, and endorsements contained therein. To the extent
9 that any of the averments contained in paragraph 13 of the complaint are to the contrary, St. Paul
10 denies each and every such averment.

11 14. In response to paragraph 14 of the complaint, St. Paul admits that it issued Policy
12 No. TE09405602 to E.piphany, Inc., and that said policy provided insurance pursuant to all of the
13 terms, conditions, limitations, exclusions, and endorsements contained therein. To the extent
14 that any of the averments contained in paragraph 14 of the complaint are to the contrary, St. Paul
15 denies each and every such averment.

16 15. In response to paragraph 15 of the complaint, St. Paul admits that it issued Policy
17 No. TE09405602 to E.piphany, Inc., and that said policy provided insurance pursuant to all of the
18 terms, conditions, limitations, exclusions, and endorsements contained therein. To the extent
19 that any of the averments contained in paragraph 15 of the complaint are to the contrary, St. Paul
20 denies each and every such averment.

21 16. In response to paragraph 16 of the complaint, St. Paul admits that it issued Policy
22 No. TE09405602 to E.piphany, Inc., and that said policy provided insurance pursuant to all of the
23 terms, conditions, limitations, exclusions, and endorsements contained therein. To the extent
24 that any of the averments contained in paragraph 16 of the complaint are to the contrary, St. Paul
25 denies each and every such averment.

26 17. St. Paul is without knowledge or information sufficient to form a belief as to the
27 truth of the averments contained in paragraph 17 of the complaint.

1 18. St. Paul is without knowledge or information sufficient to form a belief as to the
2 truth of the averments contained in paragraph 18 of the complaint. The operative complaint in
3 the "*Sigma I*" action, in its entirety, speaks for itself. St. Paul denies the averments and
4 characterizations of paragraph 18 of the complaint to the extent they are inconsistent with the
5 averments of the operative complaint in the "*Sigma I*" action.

6 19. St. Paul is without knowledge or information sufficient to form a belief as to the
7 truth of the averments contained in paragraph 19 of the complaint. The operative complaint in
8 the "*Sigma I*" action, in its entirety, speaks for itself. St. Paul denies the averments and
9 characterizations of paragraph 19 of the complaint to the extent they are inconsistent with the
10 averments of the operative complaint in the "*Sigma I*" action.

11 20. St. Paul is without knowledge or information sufficient to form a belief as to the
12 truth of the averments contained in paragraph 20 of the complaint. The operative complaint in
13 the "*Sigma I*" action, in its entirety, speaks for itself. St. Paul denies the averments and
14 characterizations of paragraph 20 of the complaint to the extent they are inconsistent with the
15 averments of the operative complaint in the "*Sigma I*" action.

16 21. St. Paul denies the averments contained in paragraph 21 of the complaint.

17 22. In response to paragraph 22 of the complaint, St. Paul admits that it issued Policy
18 No. TE09405602 to E.piphany, Inc., and that said policy provided insurance pursuant to all of the
19 terms, conditions, limitations, exclusions, and endorsements contained therein. St. Paul denies
20 each and every remaining averment contained in paragraph 22 of the complaint.

21 23. St. Paul is without knowledge or information sufficient to form a belief as to the
22 truth of the averments contained in paragraph 23 of the complaint. The operative complaint in
23 the "*Sigma I*" action, in its entirety, speaks for itself. St. Paul denies the averments and
24 characterizations of paragraph 23 of the complaint to the extent they are inconsistent with the
25 averments of the operative complaint in the "*Sigma I*" action.

26 24. St. Paul is without knowledge or information sufficient to form a belief as to the
27 truth of the averments contained in paragraph 24 of the complaint. The operative complaint in
28 the "*Sigma I*" action, in its entirety, speaks for itself. St. Paul denies the averments and

1 characterizations of paragraph 24 of the complaint to the extent they are inconsistent with the
2 averments of the operative complaint in the "*Sigma I*" action.

3 25. St. Paul is without knowledge or information sufficient to form a belief as to the
4 truth of the averments contained in paragraph 25 of the complaint. The operative complaint in
5 the "*Sigma I*" action, in its entirety, speaks for itself. St. Paul denies the averments and
6 characterizations of paragraph 25 of the complaint to the extent they are inconsistent with the
7 averments of the operative complaint in the "*Sigma I*" action.

8 26. St. Paul is without knowledge or information sufficient to form a belief as to the
9 truth of the averments contained in paragraph 26 of the complaint. The operative complaint in
10 the "*Sigma I*" action, in its entirety, speaks for itself. St. Paul denies the averments and
11 characterizations of paragraph 26 of the complaint to the extent they are inconsistent with the
12 averments of the operative complaint in the "*Sigma I*" action.

13 27. St. Paul is without knowledge or information sufficient to form a belief as to the
14 truth of the averments contained in paragraph 27 of the complaint. The operative complaint in
15 the "*Sigma I*" action, in its entirety, speaks for itself. St. Paul denies the averments and
16 characterizations of paragraph 27 of the complaint to the extent they are inconsistent with the
17 averments of the operative complaint in the "*Sigma I*" action.

18 28. St. Paul is without knowledge or information sufficient to form a belief as to the
19 truth of the averments contained in paragraph 28 of the complaint. The operative complaint in
20 the "*Sigma I*" action, in its entirety, speaks for itself. St. Paul denies the averments and
21 characterizations of paragraph 28 of the complaint to the extent they are inconsistent with the
22 averments of the operative complaint in the "*Sigma I*" action.

23 29. St. Paul is without knowledge or information sufficient to form a belief as to the
24 truth of the averments contained in paragraph 29 of the complaint.

25 30. St. Paul admits that it received notice of the "*Sigma I*" action on or about July 22,
26 2004, but otherwise is without knowledge or information sufficient to form a belief as to the truth
27 of the averments contained in paragraph 30 of the complaint.

1 31. St. Paul admits that it sent a letter to E.piphany, Inc. and its insurance broker on or
2 about July 27, 2004, declining to afford defense and indemnity to E.piphany, Inc. in the "*Sigma*
3 *I*" action; that St. Paul subsequently communicated with E.piphany, Inc. and its insurance broker
4 concerning the "*Sigma I*" action; and that St. Paul never agreed to afford defense and indemnity
5 to E.piphany, Inc. in the "*Sigma I*" action. St. Paul otherwise is without knowledge or
6 information sufficient to form a belief as to the truth of the averments contained in paragraph 31
7 of the complaint.

8 32. St. Paul incorporates by reference all preceding paragraphs of this answer as
9 though fully incorporated herein. St. Paul admits that it issued Policy No. TE09405602 to
10 E.piphany, Inc., and that said policy provided insurance pursuant to all of the terms, conditions,
11 limitations, exclusions, and endorsements contained therein. St. Paul is without knowledge or
12 information sufficient to form a belief as to the truth of the remaining averments contained in
13 paragraph 32 of the complaint.

14 33. St. Paul is without knowledge or information sufficient to form a belief as to the
15 truth of the averments contained in paragraph 33 of the complaint, except that St. Paul denies the
16 averments that E.piphany, Inc. has been excused from performing any of the obligations or
17 conditions under Policy No. TE09405602 and St. Paul denies that it has breached a duty to
18 defend.

19 34. St. Paul admits that it issued Policy No. TE09405602 to E.piphany, Inc., and that
20 said policy provided insurance pursuant to all of the terms, conditions, limitations, exclusions,
21 and endorsements contained therein, and otherwise denies the averments contained in paragraph
22 34 of the complaint.

23 35. St. Paul denies the averments contained in paragraph 35 of the complaint.

24 36. St. Paul is without knowledge or information sufficient to form a belief as to the
25 truth of the averments that a controversy exists between plaintiff and St. Paul concerning the
26 parties' rights and obligations under Policy No. TE09405602 in relation to claims asserted in the
27 "*Sigma I*" action, and otherwise denies the averments contained in paragraph 36 of the
28 complaint.

1 37. St. Paul incorporates by reference all preceding paragraphs of this answer as
2 though fully incorporated herein. St. Paul is without knowledge or information sufficient to form
3 a belief as to the truth of the averments contained in paragraph 37 of the complaint.

4 38. St. Paul denies the averments contained in paragraph 38 of the complaint.

5 39. St. Paul denies the averments contained in paragraph 39 of the complaint.

6 40. St. Paul denies that the plaintiff is entitled to the relief requested in its Prayer for
7 Relief, or any relief at all.

8 AFFIRMATIVE DEFENSES

9 FIRST AFFIRMATIVE DEFENSE

10 St. Paul alleges that the complaint fails to state a claim upon which relief can be granted.

11 SECOND AFFIRMATIVE DEFENSE

12 To the extent that plaintiff has failed to mitigate, minimize, or avoid any damages it
13 allegedly sustained, any recovery against St. Paul must be reduced accordingly.

14 THIRD AFFIRMATIVE DEFENSE

15 St. Paul has at all times exercised due care concerning any actions, conduct, or other
16 matters alleged in the complaint, or any purported claim asserted therein.

17 FOURTH AFFIRMATIVE DEFENSE

18 Plaintiff has not suffered any damages as a result of any actions taken by St. Paul, and
19 plaintiff is thus barred from asserting the complaint, or any purported claim, against St. Paul.

20 FIFTH AFFIRMATIVE DEFENSE

21 Plaintiff's claims, in whole or in part, are barred by the equitable doctrine of laches.

22 SIXTH AFFIRMATIVE DEFENSE

23 St. Paul alleges that E.piphany, Inc. has failed to set out its claims with sufficient
24 particularity to permit St. Paul to raise all appropriate defenses and, thus, St. Paul reserves its
25 rights to add additional defenses as a factual basis for these claims becomes known.

26 PRAYER FOR RELIEF

27 WHEREFORE, defendant St. Paul Fire and Marine Insurance Company prays for
28 judgment as follows:

1. That plaintiff take nothing by reason of its complaint; and

2. That defendant St. Paul Fire and Marine Insurance Company be awarded costs of suit herein, and such other and further relief as the court deems just and proper.

DATED: July 15, 2008

SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: /s/ Michael A. Topp

BRUCE D. CELEBREZZE

MICHAEL A. TOPP

Attorneys for Defendant

ST. PAUL FIRE AND MARINE INSURANCE
COMPANY

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, defendant St. Paul Fire and Marine Insurance Company hereby demands a trial by jury.

DATED: July 15, 2008

SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: /s/ Michael A. Topp

BRUCE D. CELEBREZZE

MICHAEL A. TOPP

Attorneys for Defendant

ST. PAUL FIRE AND MARINE INSURANCE
COMPANY